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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 DANIEL YOUNG, *et al.*,

9 Plaintiffs,

10 v.

11 PATRICK E. PENA, *et al.*,

12 Defendants.
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Case No. C18-1007-JLR-MLP

ORDER

14 This matter comes before the Court upon Defendants' Response to the Court's October 9,
15 2019 Order to Show Cause why the Court should exercise its discretion to consider the merits of
16 their second summary judgment motion. (Dkt. # 70 (Defendants' Response to Order to Show
17 Cause ("Response")).) Defendants assert that the Court should allow their second summary
18 judgment motion, despite the fact that the subject substantially overlaps with the first summary
19 judgment motion, because of "new evidence and an expanded factual record" which is only now
20 before the Court. (*Id.* at 1-2.) Specifically, Defendants argue that during Plaintiff's September
21 25, 2019 deposition, Plaintiff admitted for the first time that (1) Plaintiff was not fully naked in

22 ORDER - 1
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1 the photographs taken of her by Defendants at the hospital, (2) her genitalia was not exposed or
2 photographed, (3) she had not begun the process of affirming her gender identity on the date in
3 question, and (4) she had no recollection of the events at the hospital. (Dkt. # 62, Ex. A
4 (Katzenjammer deposition excerpts).) In addition, Defendants assert that “we now know that the
5 involved police officers do not recall lifting the Plaintiff’s hospital gown when the photographs
6 were taken.” (Response at 2.)

7 Although Defendants fail to provide a satisfactory explanation for their failure to include
8 the hospital photographs of Plaintiff taken by Defendants as exhibits to their first motion for
9 summary judgment (as such photographs would have revealed nearly all of the “new facts” they
10 now allege), Defendants also point out that Plaintiffs had received the photographs through its
11 initial disclosures on September 24, 2018. (Response at 4.) Thus, both parties had the
12 photographs at the time the first summary judgment motion was filed and could have provided
13 them to the Court. (*Id.*) Defendants also represent that they did not understand the importance of
14 these pictures in relation to Plaintiff’s Fourth Amendment claims until after Plaintiff filed her
15 response to Defendants’ summary judgment motion. (*Id.* at 5.)

16 Plaintiff did not move to strike Defendants’ second motion for summary judgment as
17 successive, or accept the Court’s invitation to file a reply to Defendants’ response to the Order to
18 Show Cause. However, during an October 22, 2019 telephonic status conference, Plaintiff orally
19 objected to the successive summary judgment motion, arguing that no “new evidence” had been
20 uncovered. (Dkt. # 71.) Finally, Plaintiff requests a two-week extension of time to allow Plaintiff
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1 sufficient time to file an opposition due to a recent medical emergency, if the Court does elect to
2 consider the motion.

3 The Ninth Circuit has held that district courts have discretion to entertain successive
4 motions for summary judgment, independent of whether the motions involve qualified immunity.
5 *See Hoffman v. Tonnemacher*, 593 F.3d 908, 910 (9th Cir. 2010); *Knox v. Sw. Airlines*, 124 F.3d
6 1103, 1106 (9th Cir. 1997). In exercising its discretion on this question, a district court may
7 consider the following factors: “(1) an intervening change in controlling law, (2) the availability
8 of new evidence or an expanded factual record; and (3) [the] need to correct a clear error or
9 prevent manifest injustice.” *Kische USA LLC v. Simsek*, Case No. C16-0168-JLR, 2017 WL
10 5881322, *3 (W.D. Wash. November 29, 2017).

11 The Court finds that, although Defendants do not appear to have exercised due diligence
12 in providing the Court with the hospital photographs of Ms. Katzenjammer in a timely manner,
13 this is equally true of Plaintiff. The record is also substantially more complete at this time than it
14 was at the time of the Court’s first Report and Recommendation on Defendants’ motion for
15 summary judgment. In ruling on Defendants’ prior motion, the Court had to presume the veracity
16 of Plaintiff’s allegation that she was naked, her genitalia was exposed, she was undergoing the
17 process of affirming her identity, and the officers lifted her hospital gown in order to photograph
18 the areas where the taser probes had entered her body. (Dkt. # 50 at 30 (“If Ms. Katzenjammer
19 was indeed wearing only a hospital gown, which Defendants do not appear to dispute, then the
20 Defendants presumably manipulated her unconscious body – including lifting her hospital gown

1 and exposing her naked genitals – to photograph her abdomen and thigh.”.) Thus, the motion,
2 however repetitive, is not frivolous. *Hoffman*, 593 F.3d at 911.

3 Accordingly, in the interest of judicial economy, the Court shall exercise its discretion to
4 consider Defendants’ second summary judgment motion. Plaintiff’s request for a two-week
5 extension of time to oppose the summary judgment motion is GRANTED. Plaintiff shall file her
6 opposition to Defendants’ summary judgment motion by no later than **November 12, 2019**. The
7 Clerk is directed to RE-NOTE Defendants’ second motion for summary judgment (dkt. # 61) for
8 the Court’s consideration on **Friday, November 15, 2019**.

9 The Clerk is directed to send copies of this Order to the parties and to the Honorable
10 James L. Robart.

11 Dated this 23rd day of October, 2019.

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14 MICHELLE L. PETERSON
15 United States Magistrate Judge
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